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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,335	06/30/2003	Haru Ando	500.42880X00	8770

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EXAMINER	
FRISBY, KESHA	
ART UNIT	PAPER NUMBER
3714	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/608,335	ANDO ET AL.	
	Examiner	Art Unit	
	Kesha Frisby	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 August 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/30/2003*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

After the amendment filed on 8/30/2006, claims 1-13 are pending.

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: chronological correspondence.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1 & 3 manipulate an Abstract Idea (learning condition judging program) without producing a "tangible" result. The examiner will suggest inputting a display step in this method in order to make this claim tangible. In addition, since the learning condition judging program is necessarily implemented in hardware, the program is not claimed in combination with a substrate, for instance, a computer readable medium; therefore these claims are still not statutory. Claims 2 & 4-10 do not correct this problem so they are also rejected for the same reasons. Please see MPEP 2106 for guidance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atsushi (Publication Number 09-149894: English Computer Translation from the Patent of Abstracts of Japan) in view of Ho et al. (U.S. Patent Number 5,944,530).** Referring to claims 1 & 2, Atsushi discloses starting up a learning program in said information processing apparatus (abstract: problem to be solved); continuously acquiring, as said learning program progresses, measurement information of a blood flow rate in a brain a user of said information processing apparatus, said measurement information being obtained from near infrared measuring device through information acquiring means (abstract & Drawings 1-3 & 6 & associated text); storing in storage said measurement information, said input information and said operation information in association with said acquired progress of said learning program with chronological correspondence (inherent: storage device 22 & paragraph 0005: the storage device stores the data over time (i.e. chronologically), which makes the files/data useful in the medical field); and sending out information stored in said storage connected external device (Drawing 6 & external device 23). *Atsushi does not teach acquiring input information and operation information given said user to said information processing apparatus through input means, wherein the input information and the operation information indicate progress of said learning program and acquiring audio or video information said of said information processing apparatus through at least one of a*

microphone and camera connected to said information processing apparatus, wherein said audio or video information is also recorded in said storing step. However, Ho et al. teaches acquiring input information and operation information given said user to said information processing apparatus through input means, wherein the input information and the operation information indicate progress of said learning program (column 3 lines 28-31 & column 7 lines 23-25) and acquiring audio or video information said of said information processing apparatus through at least one of a microphone and camera (digital camera 180) connected to said information processing apparatus (Fig. 2B); wherein said audio or video information is also recorded in said storing step (Fig. 2B: main memory 162 & column 10 lines 40, 41 & 43-47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include acquiring information, as disclosed by Ho et al., incorporated into Atsushi in order to monitor student volitional inputs and take numerous images of the student's face.

Referring to claim 13, Atsushi discloses a near infrared measuring device (measurement device 17), terminal connected said near infrared measuring device (external device 23) for measuring a blood flow rate in a brain of a user of said terminal (abstract); wherein said terminal includes: means for continuously acquiring measurement information from said infrared measuring device (abstract & Drawings 1-3 & 6 & associated text); display for displaying said contents information received from said server (it is inherent that a computer has a display); wherein said server further includes; a storage for storing inputs from said input means, said measurement information from said near infrared measuring device, and said displayed contents

information at corresponding times in association with one another (storage 22); and means for judging conditions of the user terminal user's tackling said contents, based on information stored in said storage means (arithmetic unit 21). *Atsushi does not disclose a server connected to said terminal through a network, wherein said server includes a recording means for recording contents information and input means for accepting input instructions and operation instructions for said displayed contents information, wherein the input instructions and operation instructions indicate progress of a user's learning of the contents information.* However, Ho et al. teaches a server (server computer 152) connected to said terminal (column 3 lines 16-20) through a network (column 3 lines 33-35 & network 120), wherein said server includes a recording means for recording contents information (column 3 lines 49-53) and input means for accepting input instructions and operation instructions for said displayed contents information, wherein the input instructions and operation instructions indicate progress of a user's learning of the contents information (column 3 lines 28-31 & column 7 lines 23-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include acquiring information, as disclosed by Ho et al., incorporated into Atsushi in order to monitor student volitional inputs and take numerous images of the student's face.

Referring to claims 3, 4, 6, & 8, Atsushi discloses acquiring concurrently, through input means, information contents executed in a connected terminal (abstract), information of a blood flow rate in a brain of a user of said terminal (abstract & Drawings 1 & 6 & associated text); analyzing rate change hemoglobin concentration from said blood flow

rate (for example, paragraph 0006: hemoglobin concentration change); and storing information said degree of concentration association with said contents (storage device 22). *Atsushi does not disclose acquiring concurrently operation information and input information given said user to said terminal, further comprising the step displaying said information of said degree of concentration on a display (claim 4) and acquiring audio or video information said of said information processing apparatus through at least one of a microphone and camera connected to said information processing apparatus; wherein said audio or video information is also recorded in said storing step (Claim 6) and giving notice to said user of said terminal in accordance with a result of said step of judging said degree of concentration (claim 8).* However, Ho et al. teaches acquiring concurrently operation information and input information given said user to said terminal (column 3 lines 28-31 & column 7 lines 23-25); judging a degree of concentration of said user of said terminal using the operation information and input information (abstract), further comprising the step displaying said information of said degree of concentration on a display (for example, column 10: the examiner views this limitation as if the student has maintained and/or lost concentration; this is measured through the displayed camera images) and acquiring audio or video information said of said information processing apparatus through at least one of a microphone and camera (digital camera 180) connected to said information processing apparatus (Fig. 2B); wherein said audio or video information is also recorded in said storing step (Fig. 2B: main memory 162 & column 10 lines 40, 41 & 43-47) and teaches giving notice to said user of said terminal in accordance with a result of said step of judging said degree of concentration (column

10 line 66-column 11 line 56 and more specific column 11 lines 34-47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include acquiring information, as disclosed by Ho et al., incorporated into Atsushi in order to monitor student volitional inputs and take numerous images of the student's face. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include judging a degree of concentration, as disclosed by Ho et al., incorporated into Atsushi in order to monitor a student's degree-of-concentration during a student's education.

Referring to claim 5, Atsushi, as modified by Ho et al., teaches acquiring audio or video information said of said information processing apparatus through at least one of a microphone and camera (digital camera 180 of Ho et al.) connected to said information processing apparatus (Fig. 2B of Ho et al.); wherein said audio or video information is also recorded in said storing step (Fig. 2B: main memory 162 & column 10 lines 40, 41 & 43-47 of Ho et al.).

Referring to claim 7, Atsushi, as modified by Ho et al., teaches giving notice to said user of said terminal in accordance with a result of said step of judging said degree of concentration (column 10 line 66-column 11 line 56 and more specific column 11 lines 34-47 of Ho et al.).

Referring to claims 9 & 10, Atsushi, as modified by Ho et al., teaches further comprising a step of judging whether said input information is a correct answer to an exercise included in said learning contents or not is further provided (column 12 lines 17-30 of Ho et al.); and wherein said step of judging a degree of concentration also uses a result of

the step of judging whether said input information is a correct answer (column 10 lines 23-25 & column 12 lines 31 & 32: the examiner views this limitation as whether the concentration degree ranges from low, medium to high of Ho et al.).

Referring to claims 11 & 12, Atsushi, as modified by Ho et al., teaches displaying, on a display, information of said learning contents (monitor 178), said rate of correct answers for each exercise included in said learning contents (column 11 lines 6-8 of Ho et al.), said rate of correct answers being obtained from the result of the step of judging whether said input information is a correct answer (column 11 lines 6-8 of Ho et al.).

Response to Arguments

7. Applicant's arguments, see Remarks, filed 8/30/2006, with respect to Request for Copy of References Not Furnished, Claim for Foreign Priority, Information Disclosure Statement, Specification and Claims Objections have been fully considered and are persuasive. The objections of Request for Copy of References Not Funished, Claim for Foreign Priority, Information Disclosure Statement, Specification and Claims Objections have been withdrawn. Please see the attached 1449 with the Shimoda et al. reference initialed and dated and the Office Action Summary Acknowledging foreign priority.

8. Applicant's arguments filed 8/30/2006 have been fully considered but they are not persuasive. The 35 USC 101 rejection still stands with the fact that these claims are not tangible and statutory. Please see the rejection above.

9. Applicant's arguments filed 8/30/2006 have been fully considered but they are not persuasive. In reference to the applicant's argument, "there is no teaching or suggestion in Atsushi of the learning condition judging program executable in an information

processing apparatus and system for judging a learning condition" (pages 11 & 15). This is a preamble limitation were there is no recitation in the body of the claims of any structure, thus the body does not "breathe life" into the preamble of the claim. In addition, the applicant also argues, Atsushi does not disclose "continuously acquiring measurement information, as the learning program progresses". However, the Atsushi reference discloses in relation to Drawings 2 & 3 & paragraph 0009 that the measurements of hemoglobin versus time is continuous since the sampling rate is at a high frequency (in seconds). In order to the construct the Drawings 2 & 3, there must be continuous readings. Lastly, the applicant argues that the Atsushi reference does not disclose "storing input information ... with chronological correspondence". The Atsushi reference does disclose a storage device 22. See rejection above for further clarification.

10. In regards to applicant's argument with respect to "acquiring input information... said learning program", were considered persuasive but was rejected using Ho et al. (see rejection above). Ho et al. was a reference that was relied on in the Non-Final Office Action mailed on 5/30/2006.

11. Applicant's arguments with respect to claims 3-12 have been considered but are moot in view of the new ground(s) of rejection.

Citation of Pertinent Prior Art

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shen et al. (U.S. Publication Number 2003/0207243) teaches conducting remote instructor-controlled experimentation.

Palsson et al. (U.S. Patent Number 6,450,820) teaches a method and apparatus for encouraging physiological self-regulation through modulation of an operator's control input to a video game or training simulator.

Bergman (U.S. Patent Number 5,890,905) teaches education and life skills organizer/memory aid.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kesha Frisby whose telephone number is 571-272-8774. The examiner can normally be reached on Mon. - Wed. 7-3pm & Thurs. - Fri. 7-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6678. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kyf

Kyf 12/28/2006

KATHLEEN MOSSER
PRIMARY EXAMINER